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IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

RALPH RODNEY FIELDS,

Petitioner,

v.

JOSEPH T. DURHAM, ET AL.,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

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QUESTIONS PRESENTED

A. Whether the Court of Appeals erred when it violated 28 U.S.C. §1738 by failing to give preclusive effect to a prior state court judgment.

B. Whether the Court of Appeals erred in failing to stay the federal court appeal, in light of the judgment entered in the state trial court and the pending state court appeal.

C. Even assuming, that the Fourth Circuit was permitted to consider issues previously decided by the State Court Judgment, did the Fourth Circuit err in exceeding its authority and mandate from this Court, in departing from the proper standard of review and in making findings of fact which were not decided nor before the District Court and which were factually in dispute in the record below.

PARTIES TO THE PROCEEDING

Ralph R. Fields ("Fields") was Plaintiff in the trial court and is Petitioner herein. Joseph T. Durham, James S. Jeffers, and the Board of Trustees of Community College of Baltimore were Defendants in the trial court and are Respondents herein.

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Erred In Exceeding Its
Authority And Mandate From
This Court, In Departing
From The Proper Standard Of
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Decided Nor Before The
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I.

OPINIONS BELOW

The opinion of the Court of Appeals
for the Fourth Circuit on remand is
reported at 909 F.2d 94 (4th Cir. 1990).

The decision of the United States Supreme Court which granted certiorari and remanded the case back to the Fourth Circuit is reported at 110 S.Ct 1313 (1990). The first opinion of the Fourth Circuit is reported at 856 F.2d 655 (4th Cir. 1988). The opinion of the District Court is set forth at Appendix A (hereinafter "Apx. A"). The Fourth Circuit's Order denying Petitioners Motion To Stay Federal Appeal Process During Pendency of State Court Appeal is set forth at Apx. F. The Fourth Circuits Order denying Petitioner's Petition for Rehearing with Suggestion for Rehearing in Banc is set forth at Apx. H.

II.

JURISDICTION

The Court of Appeals for the Fourth Circuit's denial of Petitioner's Petition for Rehearing with Suggestion for Rehearing In Banc was entered on August 14, 1990. Apx. H. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

III.

STATUTORY PROVISIONS INVOLVED

A.

42 U.S.C. 1983 provides in part:

Every person, who under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at

law, suit in equity, or other proper proceeding for rendered....

B.

28 U.S.C. §1738 provides in part:

....

Such acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the court of such State, Territory, or Possession from which they are taken. June 25, 1948, c. 646, 62 Stat. 947.

IV.

STATEMENT OF CASE

Petitioner Fields originally filed a Complaint in the United States District Court for Maryland alleging that the process followed by Respondents in depriving him of his tenure and employment at Respondent college was insufficient and violated both his contractual and constitutional rights. He alleged that Respondents failed to comply with the bylaws and failed to give him proper notice and hearing. These specific allegations are set forth in the Apx. G.

Thereafter, this case was dismissed by the United States District Court for the District of Maryland on January 29, 1988. Without looking beyond the face of the Complaint, the District Court

reasoned that, under Parratt v. Taylor, 451 U.S. 527 (1981), the availability of postdeprivation remedies in the state court barred Petitioner's claim under 42 U.S.C. §1983. Apx.A. The District Court ruled that "Petitioner has stated no claim under §1983", however "[h]e is free to pursue [his state law] claims in state court." Apx. 3a.

The Fourth Circuit affirmed the District Court's dismissal of the case under Parratt v. Taylor, noting that Petitioner had meaningful postdeprivation "remedies which he may pursue in state court." Fields v. Durham, 856 F.2d 655, 657 (4th Cir. 1988) (hereinafter Fields I).

Following Fields I, Petitioner Fields scught a Writ of Certiorari to the Fourth Circuit. In addition, following

the instructions of the District and Circuit Court, Fields also initiated an action against the Respondents in the state court case entitled Fields v. Durham, et al, Circuit Court for Baltimore City, Case No. 89-116-064/CL96499, seeking to litigate his available state remedies.

In the state court proceeding, additional discovery was undertaken, and presented to the Circuit Court for Baltimore City by way of motions for summary judgment. After extensive briefing and review of summary judgment papers, including, the newly produced deposition of Dr. Cortada, the state court granted summary judgment in Petitioner Fields' favor and held as a matter of law that Dr. Fields had tenure as a faculty member and that the actions

of the Respondents violated both his contractual and constitutional rights under Maryland State law. Following this ruling, the case proceeded to trial before a jury and after approximately one week of listening to extensive evidence from sixteen (16) witnesses, the jury rendered a verdict in Plaintiff's favor and awarded him substantial compensatory and punitive damages.

On March 1, 1990, the Circuit Court for Baltimore City denied Respondent's Motion For Judgment N.O.V. Or, In The Alternative, Motion For New Trial. Apx. D. Thereafter, a judgment was enrolled against the Respondents and in favor of the Petitioner.

On March 5, 1990, this Court granted certiorari, vacated Fields I, and remanded the case to the Fourth Circuit

for reconsideration in light of Zinnermon v. Burch. Fields v. Durham, ____ U.S. ___, 110 S.Ct. 1313 (1990). Thereafter, the Fourth Circuit by order dated March 26, 1990, instructed Petitioner and Respondent's to file supplemental briefs.

By this time, however, the case had already been tried in state court, and Fields had a judgment in his favor. Therefore, on April 13, 1990, he filed a Motion To Stay Federal Appeal Process During Pendency Of State Court Appeal ("Motion To Stay"). Apx. E. In his Motion To Stay, Petitioner presented the Fourth Circuit with the fact that he had already obtained a judgment against Respondents in the Circuit Court for Baltimore City, which judgment was presently being appealed by said Respondents to the Maryland Court of

Special Appeals. Apx. 4e-4g. Fields requested that the Fourth Circuit stay the federal appeal, asserting that, in light of the state court judgment, the state court proceeding would have a "collateral estoppel" effect on any further proceedings in the federal court.

Apx. 7e.

Simultaneously with his Motion To Stay, Fields also filed a Supplemental Brief as instructed by the Fourth Circuit. Apx. F. In the Supplemental Brief Fields incorporated the Motion To Stay and argued that the "operant facts" relevant to the federal appeal had already been determined in the state court.

Subsequently, the Fourth Circuit denied Petitioners Motion to Stay (Apx. F) and rendered an additional opinion.

Fields v. Durham, 909 F.2d 94 (4th Cir. 1990) (hereinafter "Fields II"). In Fields II, although the Fourth Circuit found that Parratt did not bar a cause of action under Section 1983, it ignored the state court judgment, went beyond the face of the Complaint, and in rendering an opinion, made determinations on factual issues which were never considered below by the United States District Court and which directly contradict the factual and legal findings made by the state court.

Apparently, the Fourth Circuit in Fields II overlooked the state court judgment. Although the Court recognized that "Fields is now in state court seeking compensatory and punitive damages", Fields II, 909 F.2d at 98-99, it failed to acknowledge the fact that

Fields had already proceeded to trial and obtained a judgment in the state court.

It is from the Fourth Circuit's decision in Fields II as well as the Fourth Circuit's denial of Petitioner's Motion To Stay that this Petition For Certiorari is filed.

V.

REASONS FOR GRANTING THE PETITION

A.

The Fourth Circuit Violated 28 U.S.C. §1738 By Failing To Give Preclusive Effect To A Prior State-Court Judgment

1. Introduction

It is a well settled principle of law that pursuant to the full faith and credit statute, 28 U.S.C. §1738, a federal court must give a state court judgment the same preclusive effect, by way of res judicata and collateral estoppel, as would be given that judgment

under the law of the state in which the judgment was rendered. Allen v. McCurry, 449 U.S. 90, 96-97 (1980) (hereinafter "Allen"); Kremer v. Chemical Constr. Corp., 456 U.S. 461, 482 (1982) (hereinafter "Kremer"); Migra v. Warren City School District, 465 U.S. 75, 81 (1984) (hereinafter "Migra"); Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 381 (1985) (hereinafter "Marrese"); Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. 518, 522-523 (1986) (hereinafter "Parsons").

In fact, by specifically requiring all federal courts to give preclusive effect to state court judgments, Congress has chosen to deprive federal courts of subject matter jurisdiction to determine any factual or legal issue whenever a prior state court judgment would be given

res judicata or collateral estoppel effect in the state from which the judgment emerged. See, Allen, 449 U.S. 90, 96, 102 (1980); Thistlewaite v. New York, 362 F.Supp. 88, 92 (S.D.N.Y. 1973); Mack v. Municipality of Penn Hills, 547 F.Supp. 863, 868 (W.D.Pa. 1982).

In the instant case, after this Court had vacated and remanded Fields I, Petitioner Fields presented the Fourth Circuit with a state court judgment in his favor. Apx. E. Despite Petitioner's objections, the Fourth Circuit ignored the state court judgment and, in Fields II, rendered an opinion which completely contradicts the legal and factual findings upon which the state court judgment was based.

The Fourth Circuit's actions are in direct violation of 28 U.S.C. §1738,

because under Maryland law, the state court judgment would have precluded the Respondents from relitigating the issues underlying that judgment in a second state court action. Therefore, the full faith and credit statute, 28 U.S.C. §1738, precluded further adjudication of those issues by the federal court.

By failing to consider or apply the preclusive effect of the state court judgment, the Fourth Circuit failed to "apply the approach to §1738 that [this Court has] outlined" on numerous occasions. See e.g., Marrese, 470 U.S. at 381-387; Parsons, 474 U.S. at 522. Therefore, Fields II should be reversed and the case remanded with instructions to return the case to the District Court to interpret the Maryland preclusion law

and apply it pursuant to 28 U.S.C.
§1738.¹

2. The State Court Judgment

At the conclusion of a hearing on January 2, 1990 before the Circuit Court of Maryland for Baltimore City, Judge Hillary D. Caplan made the following findings of fact and rulings of law:

The Court finds there is tenure in this case and that under the June 3, 1970 letter, tenure was granted in two particular areas. One, as a faculty member, ... and also administrator

¹In both Marrese and Parsons, this Court found that the Court of Appeals erred in failing to consider the preclusive effect of a state court judgment under state law. Marrese, 470 U.S. at 387; Parsons, 474 U.S. at 522. In both cases this Court reversed the Court of Appeals and remanded with instructions to return the case to the District Court for a determination of the preclusive effect of the state court judgment under state law. Marrese, 470 U.S. 387; Parsons, 474 U.S. at 522.

So, the Court finds that it will grant a Motion For Summary Judgment, number one finding there is indeed tenure as a faculty member. Number two, [respondents] violated [Fields] contractual and constitutional rights ...since he was not granted [notice and hearing] under the original bylaws

Apx. 3b. Following this hearing, an Order was filed with the Circuit Court of Baltimore City stating that:

Partial summary judgment shall be entered in favor of Plaintiff on the issues of violation of his due process rights and breach of his contractual rights in connection with his status as a tenured faculty member.

Apx. C.

Following the state court jury verdict in Petitioner's favor and the denial of Respondent's Motion For Judgment N.O.V., Apx. D, this order of partial summary judgment became a final judgment. See, Maryland Rule of

Procedure 2-601; Walbert v. Walbert, 310 Md. 657 (1987).

3. Collateral Estoppel Under Maryland Law.

Under Maryland law, the doctrine of collateral estoppel (or issue preclusion) would bar Respondents from relitigating the issue of tenure and all Petitioner's rights and interests derived therefrom in a second state court proceeding. The doctrine of collateral estoppel holds that "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim." Murray International v. Graham, 315 Md. 543, 547 (1989) (quoting

Restatement (Second) of Judgments §27 (1982)). In sum, there are four essential elements necessary to invoke the principle of collateral estoppel: (i) identity of parties; as well as an issue of fact or law which is (ii) actually litigated; (iii) determined by a valid and final judgment; and (iv) essential to the prior judgment. See, e.g., Murray International v. Graham, 315 Md. 543, 549-50 (1989).

These elements are each satisfied in the present case. First there is an identity of parties. The Respondents herein were also the defendants in the state court proceeding in which a judgment was entered against them.

Second, the prerequisite of a prior issue of fact or law actually having been litigated is also satisfied in this case.

"When an issue is properly raised, by the pleadings or otherwise, and is actually submitted for determination, and is determined, the issue is actually litigated" Murray International v. Graham at 549-50 (1989) (quoting Restatement (Second) of Judgments §27, comment d (1982)). Where, as in the present case, a party moves for summary judgment as to a particular issue and a court enters summary judgment in that party's favor, the matter is deemed "actually litigated". Restatement (Second) of Judgments §27, Comment d and illustration 10 (1982).

Third, the judgment of the Circuit Court for Baltimore City is a valid and final judgment for purposes of collateral estoppel. "When an action for damages precedes to trial and a judgment is

entered on the verdict, that judgment represents a final determination of Plaintiff's claim" Welsh v. Gerber Products, 315 Md. 510, 523 (1989). In the present case, the court's partial summary judgment in Petitioner's favor was followed by a jury trial and a jury verdict in Petitioner's favor which became a final judgment under Maryland Rule 2-601. "Once final, the judgment is properly given preclusive effect as to the issues actually litigated." Welsh v. Gerber Products, 315 Md. 510, 523 (1989).

Finally, the issue of fact or law must be essential to the prior judgment. In the present case, the Circuit Court for Baltimore City ruled that Petitioner's position as a tenured faculty member was terminated without any notice or hearing in violation of his

contractual and constitutional rights. Apx. B and C. This ruling is of necessity premised upon the express finding of fact that Petitioner Fields held a tenured status as a faculty member, a property interest which the Court defined and recognized under Maryland state law.

Apx.36-46.

Since the issue of tenure and its inherent rights and interests was actually litigated and determined by a final judgment of the Circuit Court for Baltimore City, Respondents would have been barred from relitigating these issues in a second action in the Maryland Courts. Therefore, the full faith and credit statute, 28 U.S.C. §1738, also precluded further litigation of that issue by the federal courts.

In Fields II, however, the Fourth Circuit did not give preclusive effect to the judgment of the Circuit Court for Baltimore City. Instead it rendered a conflicting, inconsistent opinion wherein it re-examined the tenure issue, rejecting Fields' argument that he held a property interest in his continued employment as a tenured faculty member which could not be terminated without notice or hearing. Fields II, 909 F.2d at 98.

The Fourth Circuit pointed out that "the rules of the college, as embodied in the 'Conditions Of Appointment For Administrative And Non-Instructional Personnel'" (hereinafter "Conditions of Appointment") did not appear to permit Fields to be a member of the tenured faculty as well as an administrator. Id.

Under 28 U.S.C. §1738 the Fourth Circuit should never have even addressed the effect of the conditions of Appointment and their effect on Fields tenured status. This issue was fully litigated in the State court. The statement regarding the Conditions of Appointment directly contradicts the express language of the Circuit Court for Baltimore City which stated that, in addition to his administrative position, Fields held a tenured faculty position which was terminated without any notice or hearing.

Apx. B and C.²

² This finding of fact by the Circuit Court for Baltimore City was based, in part, upon the deposition of President Rafael Cortada who was the author of the Conditions Of Appointment For Administrative And Non-Instructional Personnel. In his deposition, former President Cortada stated specifically that Fields held both a tenured faculty and administrative employment with the respondent college.

The Fourth Circuit, in Fields II, went on to state that it had "been reluctant to recognize multiple property interests within the same employment relationship." Id. at 98. Again, this attempt to relitigate Fields' tenured status as a faculty member of the Respondent college constitutes a failure to give preclusive effect to a prior state judgment and is strictly prohibited by 28 U.S.C. §1738. The Fourth Circuit simply had no subject matter jurisdiction to consider the issue of tenure.

"Property interests are not created by the Constitution, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law...." Cleveland Board of Education v. Loudermill, 470 U.S. 523, 538 (1985)

(citing Board of Regents v. Roth, 408 U.S. at 577). The dimensions of Fields' property interests in continued employment as a faculty member stem from state law. See, Board of Regents v. Roth, 409 U.S. at 577; Cleveland Board of Education v. Loudermill, 470 U.S. at 538.

In this case, the Circuit Court for Baltimore City considered state law when it interpreted and applied the Conditions of Appointment and the Respondent college's bylaws as well as Petitioner Fields' contractual rights. In fact, the Circuit Court for Baltimore City had already defined the dimensions of Fields' property interest under state law, to wit: Fields held tenured status as a faculty member at the Respondent college for which he was to be afforded a hearing

and notice prior to termination. Apx. B and C.

Although the Fourth Circuit may have been "reluctant to recognize a property interest" in this context, it was bound to give the State Court findings of fact the same preclusive effect which would have been given in a second State Court proceeding. Therefore, 28 U.S.C. §1738 precluded the Fourth Circuit from analyzing the tenure issue. Allen v. McCurry, 449 U.S. 90 (1980) (state court judgment entitled to collateral estoppel effect in subsequent federal action brought under 42 U.S.C. §1983); University of Tenn. v. Elliott, 478 U.S. 788 (1986) (federal courts must give state agency factual findings same preclusive effect which they would be given in state court). Calvert Fire Ins.

Co. v. American Mutual Reinsurance Co.,
600 F.2d 1228, 1236 n.18 and accompanying
text (7th Cir. 1979) (state court
findings of fact are entitled to
collateral estoppel effect in a parallel
federal proceeding, even if dispositive
of a federal question) (citing, Becher v.
Contoure Laboratories, Inc., 49 S.Ct. 356
(1929)); Brannan v. Eisenstein, 804 F.2d
1041, 1045 (8th Cir. 1986).

In addition, the Fourth Circuit also
erred in its reliance on Huang v. Board
of Governors, 902 F.2d 1134 (4th Cir.
1990) (hereinafter "Huang") and Royster
v. Board of Trustees, 774 F.2d 618 (4th
Cir.) (hereinafter "Royster") cert
denied, 475 U.S. 1121 (1985). The court
relied on these cases for the proposition
that Fields could not hold two property
interests, one as an administrator and

one as a tenured professor. Fields II
909 F.2d at 98.

The Royster and Huang cases, are so factually distinguishable from the Fields case that reliance upon them is entirely erroneous.³ More importantly, however,

³ The Royster case involved a superintendent who was employed under a renewable contract. Prior to the expiration date of the contract, Royster's employer terminated him but paid him monthly checks which he accepted as compensation for the remaining contract period. Not satisfied with this compensation, however, Royster filed suit under Section 1983 claiming that, in addition to his contractual right to salary, he also had a protected property interest "to actively engage in and execute the duties of his office" for the remainder of the contract term. Royster, 774 F.2d 618, 621 (4th Cir. 1985).

The Fourth Circuit held that "Royster's contract afforded him only the right to be fully compensated, and not the right occupy the office of superintendent." Id. at 621. Moreover, the Court emphasized that Royster had directed it to no authority to support his property interest in physically possessing his job. Id.

The present case is distinguishable from Royster in that Fields is not attempting to assert a novel property interest in occupying his position as a tenured faculty member, but rather, Fields was asserting his interest in receiving a notice and hearing prior to termination of that interest. Moreover, unlike Royster, in the instant case, Fields did direct the court to authority to support his position. As noted above, the Circuit Court for Baltimore City had already ruled as a matter of law that Fields' tenured position required that he receive notice and hearing prior to termination. Apx. B. When an employee has a property interest in continued employment, it cannot be deprived without any prior notice or hearing. Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538 (1985).

Likewise, the Huang case is also distinguishable. In Huang, a tenured college professor was involuntarily transferred from one division to another division within a state university. However, the professor remained a tenured professor at the same or higher salary. The professor also received a full hearing in which his opposition to the transfer was heard over a nine day period involving approximately 40 hours of testimony from 18 witnesses. Huang, 902 F.2d at 1137-39. The professor argued that he had a property right in his original position and should not have been transferred. Id. at 1142.

under 28 U.S.C. §1738, the Court should not have been considering this issue and in doing so it failed to recognize Fields' property interests as defined by state law in a prior state court judgment, which included notice and hearing prior to termination of his tenured position as a faculty member of the Respondent college. This decision by the state court barred any relitigation

The Fourth Circuit ruled that "transfer of a tenured professor from one department to another, without loss of rank or pay, does not implicate any property interest protected by the due process clause." Id. In reaching this decision, the court relied upon Royster.

The Huang case is vastly different from the facts in the present case. Unlike the Huang case, Fields is not asserting some novel right to physically possess a job in light of a transfer with pay, but rather, is asserting the traditional and long standing right of a tenured professor to notice and hearing prior to complete and sudden termination of his state defined property interest.

of the issue in a subsequent state court action and therefore, under 28 U.S.C. §1738 the Fourth Circuit lacked subject matter jurisdiction to consider the issue of tenure.

4. Conclusion

Under 28 U.S.C. §1738, and its predecessor statutes, the federal courts, for over 200 years, have consistently applied res judicata and collateral estoppel to causes of action and issues decided by state courts. Kremer v. Chemical Construction Corp., 456 U.S. 461, 465-468, n.6 (1982). "When a state court has adjudicated [an] issue, [the doctrine of collateral estoppel] serve[s] to 'promote harmony between state and federal courts that has been a bulwark of the federal system.'" Id. Under Maryland law the judgement of the Circuit

Court for Baltimore City would have precluded Respondents from relitigating the issue of tenure in a second suit in the Maryland Courts. Therefore, the full faith and credit statute, 28 U.S.C. §1738 precluded further consideration of that issue by the Fourth Circuit.

The Fourth Circuit's decision in Fields II, directly conflicts with this Courts numerous precedents and does violence to the rationale underlying 28 U.S.C. §1738 and therefore, it must be reversed and the case remanded with instructions to return the case to the District Court to interpret Maryland issue preclusion law and apply it relative to 28 U.S.C. §1738.

B.

The Fourth Circuit Erred When It Failed To Stay The Federal Court Appeal Proceeding In Light Of A State Court Judgment And Pending

**State Court Appeal In The Parallel
State Court Litigation**

Throughout this litigation the federal courts have told Fields to pursue his remedies in the state court.⁴ In fact, in Fields I, the court stated that the dismissal of Fields' §1983 claim under Parratt was justified only because of the fact that he had these remedies which he could pursue in state court. Fields I, 856 F.2d at 659. See also, Fields II, 909 F.2d at 98-99. Fields did

⁴ The United States District Court for the District of Maryland told Fields that he was "free to pursue [his state law] claims in the state court." Apx. _____. In Fields I, the Fourth Circuit told Fields that he had meaningful post deprivation "remedies which he may pursue in state court." Fields I, 856 F.2d at 657. In Fields II, the Fourth Circuit instructed Fields that the proper form to explore his contract violations and deprivation of property interest under the Maryland Constitution was in state court. Fields II, 909 F.2d at 98-99.

go to the state court and obtained a judgment in his favor.

After obtaining his judgment Fields filed his Motion To Stay The Federal Appeal Process. Apx. E. The Fourth Circuit, however, denied Fields' Motion To Stay, Apx. F, and in its subsequent opinion, Fields II, failed to even recognize that Fields had obtained a judgment in the State Court. Rather, the court appeared to assume that Fields was still in the pre-trial stages of litigation.⁵

Generally, federal courts have discretion to stay an action when there

⁵ In Fields II the Fourth Circuit noted that Fields "is now in state court seeking compensatory and punitive damages for numerous contract violations and deprivation of his property interest under the Maryland Constitution." 909 F.2d at 98-99. However, at that time, Fields had already, in fact, obtained a judgment against the Respondents. Apx. D.

is an ongoing parallel action in the state court. Colorado River Water Conservation District v. United States, 424 U.S. 800, 96 S.Ct. 1236 (1976) (hereinafter "Colorado River"); LaDuke v. Burlington Northern Railroad Company, 879 F.2d 1556, 1558 (7th Cir. 1989) (hereinafter "LaDuke"). The court's discretion is not unreviewable, Moses H. Cone Memorial Hospital v. Mercury Constr. Corp., 460 U.S. 1, 19, 103 S.Ct. 927, 938 (1983), and rests "on considerations of '[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.'" Colorado River, 424 U.S. at 817, 96 S.Ct. at 1246. However, "the mere fact that an action is pending in state court ordinarily is no bar to parallel federal proceedings." LaDuke,

879 F.2d at 1558. Rather, the surrender of jurisdiction in deference to parallel state proceedings is warranted only in special circumstances. Id.

In the present case, such special circumstances exist. When Fields filed his Motion to Stay, the parallel state proceeding was no longer "pending" or "ongoing", rather, the proceedings in the state court had already reached a conclusion and a judgment had been entered in Fields' favor. Menzel v. County Utilities Corp., 501 F. Supp. 354, 359 (E.D. Va. 1979) (staying federal proceeding where state court judgment had been entered in parallel state court proceeding, pending state court appeal). The Fourth Circuit overlooked this fact and proceeded to address the factual merits of Fields' case which had already

been determined by the state court judgment. The results of this repetitive "litigation of identical issues" already determined by the state court is both "unseemly" and a "grand waste" of the efforts of the parties and the courts. See, LaDuke, 879 F.2d at 1560. "But judicial economy is not the only value that is placed in jeopardy. The legitimacy of the court system in the eyes of the public in fairness to the individual litigants are also endangered by duplicitous suits...." Lowman Construction, Inc. v. Brant Construction Co., 780 F.2d 691, 694 (7th Cir. 1985).

In the present case, numerous factors compelled the federal court to stay the federal appeal process. First, the federal court had specifically instructed Fields to seek remedies in

state court.⁶ Therefore, it was inappropriate to ignore the State Court's determination of facts once Fields had received a judgment in the Circuit Court for Baltimore City.

The Fourth Circuit ruled that its dismissal of Fields' §1983 action was justified only on grounds that he had adequate state court remedies. Fields I, 856 F.2d at 659; Fields II, 909, F.2d at 98-99. If the state appellate court reversed the state trial court judgment, then there may, in fact, be no adequate remedies for Fields in state court. Therefore, the Fourth Circuit should have stayed the appeal proceedings pending the outcome of the state court appeal so that it could reconsider the dismissal of his

⁶ See footnote 4 and accompanying text, supra at ____.

§1983 action should Fields have no adequate state court remedies. Moreover, by staying the action and permitting the state court judgment to proceed on appeal in the state court, the federal court could have possibly avoided the constitutional issue in Fields II, See, e.g., Glasgow, Inc. v. Noetzel, 556 F.Supp. 595, 599 (S.D.W. Va. 1983); Calvert Fire Insurance Co. v. American Mutual Reinsurance Co., 600 F.2d 1228, 1236 (7th Cir. 1979).

The "desirability of avoiding piece-meal litigation" and the duplicating of efforts and the possibility of reaching different and inconsistent results further weighed in favor of staying the proceedings. See, e.g., LaDuke, 879 F.2d at 1560; Day Union Mines, Inc., 862 F.2d 652, 659 (7th Cir. 1988).

Furthermore, under the Feldman Doctrine announced in District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303 (1983), a lower federal court cannot effectively take appellate jurisdiction of state court decisions. Lewis v. East Feliciana Parish School Board, 820 F.2d 143, 146 (5th Cir. 1987). By overlooking the state court judgment, and making factual determinations contrary to those made by the Circuit Court for Baltimore city, the Fourth Circuit was "in essence" reviewing the state court judgment which it had no appellate jurisdiction to do. See, Id., at 146.

As a matter of comity, federal courts should avoid the risk of misinterpreting state law. Here, by failing to grant Fields' Motion To Stay

the federal court did improperly interpret state law relative to Fields' rights under his contract with Respondent, the Respondents' bylaws and the Conditions of Appointment.

Under the facts of this litigation, the fourth Circuit abused its discretion when it failed to grant Fields Motion to Stay. Therefore, this Court should reverse the Fourth Circuit's Opinion in Fields II, and remand the case to the Fourth Circuit with instructions to stay the federal appeal pending the outcome of the state court appeal of the state court judgment. See, LaDuke, 879 F.2d 1556 (1989); (district court properly stayed federal litigation pending resolution of parallel state claims which threatened inconsistent results); Royster v. Chrysler Corp., 864 F.2d 1299 (7th Cir.

1988) (stay rather than dismissal, is appropriate procedural mechanism for the district court to employ in deferring to parallel state court proceeding); Menzel v. County Utilities Corp., 501 F. Supp. 354, 359 (E.D. Va. 1979) (district court stayed federal action until appeal from state court judgment had run its course).

C.

Even assuming, that the Fourth Circuit was permitted to consider issues previously decided by in the State Court Judgment, the Fourth Circuit erred in exceeding its authority and mandate from this Court, in departing from the proper standard of review and in making findings of fact which were not decided nor before the District Court and which were factually in dispute in the record below.

1. Introduction

Originally, in Fields I the Fourth Circuit affirmed the District Court's dismissal on ground that, under the Parratt line of cases, the availability of postdeprivation remedies in State

Court was sufficient to satisfy the requirements of due process. Fields I, 856 F.2d at 657. Fields sought a Writ Of Certiorari, arguing that the Fourth Circuit's application of Parratt conflicted with the decision of a majority of the other Circuits. This Court granted certiorari and the case was subsequently vacated and remanded for the Circuit Court to reconsider its application of Parratt in light of Zinerman v. Burch, 100 S.Ct. 975 (1990).

On remand, however, the Fourth Circuit affirmed its prior opinion, but "for different reasons." Fields II, 909 F.2d at 96. Surprisingly, the Court went beyond its authority and mandate in making findings of material facts which were in dispute below. See, Id. at 96-89. Accordingly, the Fourth Circuit departed

from the proper standard of review and made factual findings that were contrary to the evidence before the District Court. See Apx. G.

The Fourth Circuit's affirmance is based on entirely new factual findings which were not considered by the District Court when it dismissed Petitioners case for failure to state a §1983 claim under Parratt. The dismissal was based on Petitioner availability of state postdeprivation remedies and not factual considerations. Apx. 3a-4a. Notwithstanding, the Fourth Circuit's new factual findings contradict the factual allegations of the Amended Complaint as well as the undisputed Affidavits, discovery pleadings and documentary evidence before the District Court. Apx. G.

Furthermore, these factual findings were contrary to the evidence established at subsequent hearings and a one week trial in the state court, which the Fourth Circuit completely, as argued above, overlooked and ignored. Finally, by making determinations on factual issues, the Court failed to properly apply the applicable standard of review. See Apx. 22g-36g.

Though neither Fields I nor Fields II affects or precludes Petitioner from obtaining judgment in the state court on all his state court remedies, (909 F.2d at 98-99) Petitioner contends this Petition should be granted in that the opinion in Fields II is an extreme departure from the accepted and usual course of judicial proceedings. In so doing the Fourth Circuit overlooked

numerous material facts concerning Fields' status as a tenured professor at the time of his termination. These factual matters include the undisputed and uncontroverted affidavits of college officials, deposition testimony and Answers To Interrogatories of Respondents' See Apx. G.; as well as material facts developed in a subsequent jury trial of Fields' claims in the state court, (Fields v. Durham, Circuit Court for Baltimore City, Case No. 89116-064/ CL96499), which completely controvert many facts set forth in Fields II.

One such fact alleged in the District Court and more fully developed at the subsequent trial was that it became disputed whether the Board Of Trustees ever held an actual vote to terminate Fields from the college

following the purported Board hearing. Apx. 7g. Therefore, the conclusion reached in Fields II that "after the hearing on August 12, 1986, the Board unanimously affirmed Fields' discharge", (909 F.2d at 96) overlooks material facts which were in dispute below and which were inaccurate in light of the facts established at the intervening state court trial. See Apx. 7g.

The Fourth Circuit further overlooked or incorrectly applied facts different from those established in the record below concerning the circumstances surrounding the notice and process given concerning Fields' termination. Apx. G. The Fourth Circuit overlooked the allegations of the Complaint that the deficiencies given for the termination were not "serious" but rather,

superficial, a pretext, and not actual performance deficiencies. See Petition For Rehearing at Apx. 8g.

Further, the Court ignored many other factual allegations below showing material facts indispute, including that Fields did not waive his appeal to the President's Cabinet. Compare, Fields II 909 F.2d 96 with Apx. 9g. Once Fields learned of the true circumstances surrounding the cabinet's appeal, he demanded an appeal to the President's Cabinet but it was denied him. See Petition, Apx. 9g. These facts were not only alleged in the Amended Complaint, but clearly established at the subsequent trial in the State court. Apx. 9g. Additionally, though the opinion states that Fields had the opportunity to present numerous exhibits, the opinion

overlooks the Petitioners factual allegations that the Board never gave him an "impartial" hearing in that the Board never reviewed or considered his written and documentary evidence. Id. Apx. 9g-10g.

2. Failure to Apply Proper Standard of Review

By making these determinations the Fourth Circuit has clearly gone beyond the mandate and has failed to apply a proper standard of appellate review.

In the Fields II decision, the Court does not indicate whether it is utilizing a Motion to Dismiss 12(b)(6) or a Motion for Summary Judgment Rule 56, standard of review, nor is it clear that any standard of review was applied. However, affirming the lower court was improper

under either standard of review because the Court of Appeals cannot look outside the Complaint on one hand, and make factual findings on matters which were disputed below on the other. The approach taken by the Court in Fields II will lead to inconsistent interpretations of 42 U.S.C. §1983 and is inconsistent with cases from other Circuits concerning the appropriate standards of review.

Fields II unfairly brushes aside Fields' contention that the Complaint, Affidavits and other evidence before the Court below demonstrated that he held tenure which was terminated without proper notice or hearing.

The facts below did not establish that the Conditions of Appointment prohibit Fields from holding a tenured position as asserted in Fields II, 909

F.2d at 98. Not only did Fields allege in his Amended Complaint that he held tenure at the time he was terminated, and that his tenured position was not effected by the Conditions Of Appointment (See, Apx. 17g), but he also backed up these allegations with the following uncontroverted evidence: the affidavit of Rafael L. Cortada, past President of the Respondent college and author of the "Conditions Of Appointment"; Affidavit of William Hammond, a former tenured professor and Associate Dean of Finance and Plant Management and former acting President of Respondent college; Affidavit of Raymond C. Bowen, former Vice President of the Respondent college. See Petition For Rehearing And Suggestion For Rehearing In Bank at Apx. G at 6g-7g. This portion of the Appendix clearly sets

forth numerous other uncontroverted evidence before the District Court which was ignored.

The Respondent's Motion in the District Court below was a "Motion To Dismiss And/Or In The Alternative, Motion For Summary Judgment." Though Respondents never raised the Parratt issue in their motion, the court, *sua sponte*, found that on the fact of Petitioner's Complaint, he had failed to state a claim under §1983 because of the availability to him of postdeprivation remedies in State Court. Fields' Complaint. See, Apx. G. The Court below held as a matter of law that "under these circumstances it is clear that Plaintiff has stated no claim under Section 1983". Id. The District Court made no determination as to material facts that were in dispute and did not

rely upon any of the numerous affidavits, deposition excerpts or other summary judgment papers filed by either Petitioner or Respondent. Id.

Fields I noted that the "district court granted defendant's motion for summary judgment on the §1983 claim" but used 12(b)(6) language in concluding that in light of Parratt "Fields had failed to state a claim cognizable under §1983". Subsequently in Fields II the Fourth Circuit again concluded that "Fields has failed to state a claim under §1983."

Accordingly, it is clear from reviewing these cases that the District Court and Fields I dealt strictly with the face of the Complaint in finding Fields failed to state a claim under §1983 upon which relief could be granted.

In reviewing a dismissal for failure to state a claim upon which relief can be granted, the Court Of Appeals must accept all material allegations of the Complaint as true and resolve all factual disputes in favor of Petitioner. Kelson v. City of Springfield, 767 F.2d 651, 653 (9th Cir. 1985); O'Quinn v. Manuel, 773 F.2d 605, 608 (5th Cir. 1985). The Court Of Appeals is required to evaluate the correctness of the dismissal solely on the basis of the allegations in the Complaint; it cannot look outside the pleadings nor can it uphold dismissal unless it appears beyond doubt that Plaintiff can prove no set of facts in support of its claim which would entitle it to relief. Id.; Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02 (1957); Ware v. Associated Milk

Producers, Inc., 614 F.2d 413, 415 (5th Cir. 1980); O'Quinn v. Manuel, 767 F.2d 174, 177 (5th Cir. 1985). Although the Court Of Appeals may affirm a district court's dismissal on any basis fairly supported by the record, dismissal under Federal Rule Of Civil Procedure 12(b)(6) should not be affirmed unless it is clear that the complaint could not be saved by any amendment. Kelson v. City of Springfield, 767 F.2d 651, 656 (9th Cir.1985).

The case of Ware v. Associated Milk Producers, Inc., 614 F.2d 413 (5th Cir. 1980) presented facts similar to the present case. There the defendant had filed a "Motion To Dismiss Or For Summary Judgment" like the Respondents. In Ware a dispute arose over whether the lower court's order granting the motion a grant

of dismissal or summary judgment. Id. at 414. Although the lower court had "indicated" it was granting summary judgment, the Court of Appeals found that the order itself was based on the Complaint alone and was therefore was a grant of defendant's Motion To Dismiss. Id. Based on this determination, the court held that the proper standard of review was to "evaluate the dismissal solely on the basis of the allegations in the complaint." Id.

Fields takes the position that the Order appealed from in this case is analogous to the Order appealed from in Ware v. Associated Milk Producers, Inc., supra. As such, the Circuit Court was required to evaluate the District Court's Order solely on the basis of the Complaint. However, this standard of

review for a Motion To Dismiss was not followed. By concluding that Fields tenured status was "unclear" and apparently not permitted by the Conditions Of Appointment, the Fourth Circuit did not accept the allegations and inferences therefrom in the Complaint as true.

As set forth above, Fields alleged facts which, if accepted as true, demonstrate that he did not receive adequate notice or reasons for his termination, and did not receive a proper hearing, with respect to his tenured position. In light of these facts, it could not have been concluded to a certainty that Fields was entitled to no relief under any statement of facts which could be proved in support of his claim.

See, 2A Moore's Federal Practice, §12.8 at 2271-74 (2d. Ed. 1983).

Assuming for argument's sake, that the appropriate standard of review here was a Rule 56 review, the Fourth Circuit still went beyond its authority in that there were many material facts in dispute as set forth above. Whether Fields received notice as to the termination of his administrative position and/or tenured position with the Respondent college, and whether he received a fair and impartial hearing with respective to his administrative and/or tenured position were, at the very least, disputed issues of fact below. See Apx. G.

In conclusion, Fields II failed to apply the appropriate standard of review, and arbitrarily made findings of fact

which contradict the evidence below and which ignore the allegations of the Complaint. Therefore, Petitioner requests that this Petition be granted in that the Fourth Circuit departed from the accepted and usual course of judicial proceedings.

CONCLUSION

For the reasons argued above, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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